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4-2-14. Violations of title unlawful.

It is unlawful for any person, or the officers or employees of any person, to willfully violate, disobey, or disregard this title or any notice or order issued under this title.

History: C. 1953, 4-2-14, enacted by L. 1985, ch. 104, § 5.

4-2-15. Civil and criminal penalties — Costs — Civil liability.

(1) Except as otherwise provided by this title, any person, or the officers or employees of any person, who violates this title or any lawful notice or order issued pursuant to this title shall be assessed a penalty not to exceed \$5,000 per violation in a civil proceeding, and in a criminal proceeding is guilty of a class B misdemeanor. A subsequent criminal violation within two years is a class A misdemeanor.

(2) Any person, or the officers or employees of any person, shall be liable for any expenses incurred by the department in abating any violation of this title.

(3) A penalty assessment or criminal conviction under this title shall not relieve the person assessed or convicted from civil liability for claims arising out of any act which was also a violation.

History: C. 1953, 4-2-15, enacted by L. 1985, ch. 104, § 6.

Sentencing for misdemeanor, §§ 76-3-201, 76-3-204, 76-3-301.

Cross-References. — Sale of adulterated or mislabeled commodities as misdemeanor, § 76-6-507.

COLLATERAL REFERENCES

Am. Jur. 2d. — 35 Am. Jur. 2d Food § 74.

C.J.S. — 36A C.J.S. Food § 30.

Key Numbers. — Food ☞ 16.

CHAPTER 3

UTAH DAIRY ACT

Section		Section	
4-3-1.	Definitions.	4-3-7.	Testing and measuring milk — Standards prescribed — Milk quality work in accordance with regulations.
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Section		Section	
4-3-12.	Injunctions — Bond not required — Standing to maintain private action — Damages authorized.	4-3-15.	Dairy Advisory Board created — Composition — Appointment — Removal — Responsibilities — Compensation.
4-3-13.	Milk or milk products consumed by owner of farm exempt.	4-3-16.	Repealed.
4-3-14.	Sale of raw milk prohibited — Exceptions — Suspension of producer's permit.		

4-3-1. Definitions.

As used in this chapter:

- (1) "Adulterated" means any dairy product which:
 - (a) contains any poisonous or deleterious substance that may render it injurious to health;
 - (b) has been produced, prepared, packaged, or held under unsanitary conditions, or where it may have become contaminated or where it may have become diseased or injurious to health;
 - (c) contains any food additive that is unsafe within the meaning of Section 409 of the Federal Food, Drug and Cosmetic Act;
 - (d) contains any filthy, putrid, or decomposed substance, or fresh fluid milk which contains lactic acid at or above the level of .18 of 1%, or cream with a lactic acid level at or above .8 of 1%, or which is otherwise unfit for human food;
 - (e) is the product of a diseased animal or an animal which died otherwise than by slaughter, or an animal fed upon uncooked offal;
 - (f) has intentionally been subjected to radiation, unless the use of the radiation is in conformity with a regulation or exemption promulgated by the department; or
 - (g) has any valuable constituent omitted or abstracted, or which has any substance substituted in whole or in part therefor, or which has damage or inferiority concealed in any manner, or which has any substance added, mixed, or packed with the product to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value.
- (2) "Dairy product" means any product derived from raw or pasteurized milk.
- (3) "Distributor" means any person who distributes a dairy product.
- (4) "Filled milk" means any milk, cream, or skimmed milk, whether condensed, evaporated, concentrated, powdered, dried, or desiccated, which has fat or oil other than milk fat added, blended, or compounded with it so that the resultant product is an imitation or semblance of milk, cream, or skimmed milk. It does not include any distinctive proprietary food compound which is prepared and designated for feeding infants and young children which is customarily used upon the order of a licensed physician; provided, that the word "milk" does not appear in the product name or in any statement on the label, and that the label conforms with the food labeling requirements.
- (5) "Frozen dairy products" mean dairy products normally served to the consumer in a frozen or semifrozen state.
- (6) "Grade A milk," "grade A milk products," and "milk" for the purposes of this chapter have the same meaning that is accorded such terms

in the federal standards for grade A milk and grade A milk products unless modified by regulations of the department.

(7) "License" means a document allowing a person or plant to process, manufacture, supply, test, haul, or pasteurize milk or milk products or conduct such other activity as specified by the license.

(8) "Manufacturer" means any person who processes milk in such a way that its character is changed.

(9) "Manufacturing milk" means milk used in the production of non-grade A dairy products.

(10) "Misbranded" means any dairy product whose label is false or misleading in any particular, or whose label or package fails to conform to any federal regulation adopted by the department which pertains to packaging and labeling. It also means:

(a) any dairy product in final packaged form manufactured in this state which does not bear the manufacturer's, packer's, or distributor's name, address, and plant number, if applicable; and, a clear statement of the product's common or usual name, quantity, and ingredients, if applicable, and any other information required by regulation of the department;

(b) any butter in consumer package form that is not at least B grade, or that does not meet the grade claimed on the package, measured by U.S.D.A. butter grade standards;

(c) any imitation butter made in whole or in part from material other than wholesome milk or cream, except clearly labeled "margarine";

(d) renovated butter unless the words "renovated butter," in letters not less than $\frac{1}{2}$ -inch in height appear on each package, roll, square, or container of such butter; or

(e) any dairy product in final packaged form which makes nutritional claims or adds or adjusts nutrients that are not so labeled.

(11) "Pasteurization" means any process which renders dairy products practically free of disease organisms and is accepted by federal standards.

(12) "Permit or certificate" means a document allowing a person to market milk.

(13) "Plant" means any facility where milk is processed or manufactured.

(14) "Processor" means any person who subjects milk to a process.

(15) "Producer" means a person who owns cows that produce milk for consumption by persons other than the producer's family, employees, or nonpaying guests.

(16) "Raw milk" means unpasteurized milk.

(17) "Renovated butter" means butter that is reduced to a liquid state by melting and drawing off such liquid or butter oil and churning or otherwise manipulating it in connection with milk or any product of milk.

(18) "Retailer" means any person who sells or distributes dairy products directly to the consumer.

History: C. 1953, 4-3-1, enacted by L. 1979, ch. 2, § 4.

Compiler's Notes. — Section 409 of the Federal Food, Drug and Cosmetic Act, referred to in Subsection (1)(c), appears as 21 U.S.C. § 348.

Cross-References. — Dairy promotion, Chapter 22 of this title.

Food wholesomeness, Chapter 5 of this title.

COLLATERAL REFERENCES

Am. Jur. 2d. — 35 Am. Jur. 2d Food §§ 1 to 32, 41 to 43, 47 to 73.

C.J.S. — 36A C.J.S. Food §§ 1 to 7, 10 to 18.
Key Numbers. — Food ⇐ 1 to 8.

4-3-2. Authority to make and enforce regulations.

The department is authorized and directed, subject to the Utah [Administrative] Rulemaking Act, to make and enforce such regulations as may in its judgment and discretion be necessary to carry out the purposes of this chapter.

History: C. 1953, 4-3-2, enacted by L. 1979, ch. 2, § 4.

Utah Administrative Rulemaking Act, §§ 63-46a-1 to 63-46a-15.

Cross-References. — Enforcement of Agricultural Code, § 4-1-4.

4-3-3. Authority in local jurisdictions to regulate dairy products — Department standards to govern — Department evaluation permitted — Local notice to cease inspection.

While nothing in this chapter shall impair the authority of any town, city, or county to regulate the production, handling, storage, distribution, or sale of dairy products, frozen dairy products, grade A milk, grade A milk products, or milk, within their respective jurisdictions, a common standard as prescribed by the department shall be followed in such jurisdictions.

If a town, city, or county elects to enforce this chapter, the department shall accept its findings relative to inspections in lieu of making its own inspections, but the department may evaluate the effectiveness of any local inspection program. If a town, city, or county intends to cease making inspections under this chapter, it shall notify the department of its intent to cease inspection at least one year in advance of the actual cessation of inspection.

Upon request, the commissioner shall cooperate with other state agencies, towns, cities, counties, and federal authorities in the administration and enforcement of this chapter.

History: C. 1953, 4-3-3, enacted by L. 1979, ch. 2, § 4.

and inspection of butter and cheese, §§ 10-8-43, 10-8-44.

Cross-References. — Municipal regulation

Municipal regulation of dairies, § 10-8-66.

4-3-4. Authority to inspect premises.

The department may inspect any premises where dairy products are produced, manufactured, processed, stored, or held for distribution, at reasonable times and places, to determine whether such premises are in compliance with this chapter and the regulations promulgated pursuant to it. If access is denied the department, it may proceed immediately to the nearest court of competent jurisdiction and seek an ex parte warrant or its equivalent to permit inspection of the premises.

History: C. 1953, 4-3-4, enacted by L.
1979, ch. 2, § 4.

4-3-5. Authority to collect samples — Receipt — Names of distributors.

(1) Samples of dairy products from each dairy farm or processing plant may be secured and examined as often as deemed necessary by the department.

(2) Samples of dairy products from stores, cafes, soda fountains, restaurants, and other places where dairy products are sold may be secured and examined as often as deemed necessary by the department.

(3) Samples of milk or dairy products may be taken by the department at any time before final delivery to the consumer.

(4) The department shall provide a signed receipt for all samples taken showing the date of sampling and the amount and kind of sample taken; provided, that the department is not liable to any person for the cost of any sample taken.

(5) All proprietors of stores, cafes, restaurants, soda fountains, and other similar places shall furnish the department, upon request, with the names of all distributors from whom dairy products are obtained.

History: C. 1953, 4-3-5, enacted by L.
1979, ch. 2, § 4.

4-3-6. Condemnation, embargo, denaturization of unfit milk or dairy products — Unfit equipment.

(1) The department may condemn or embargo any milk or dairy product which is adulterated, misbranded, or not produced or processed in accordance with this chapter.

(2) The department may condemn the use of any equipment, tank, or container used to produce, process, manufacture, or transport milk or dairy products that it finds, upon inspection, to be unclean or contaminated.

(3) The department may mark or tag any condemned equipment, tank, or container with the words "this (equipment, tank, or container) is unfit to contain human food."

(4) Condemned milk shall be decharacterized or denatured with harmless coloring or rennet by the department.

History: C. 1953, 4-3-6, enacted by L.
1979, ch. 2, § 4.

4-3-7. Testing and measuring milk — Standards prescribed — Milk quality work in accordance with regulations.

Methods in accordance with those prescribed in the latest edition of "Association of Official Analytical Chemists," or the latest edition of "Standard Methods for Examination of Dairy Products," or in accordance with other publications accepted by the department, or in accordance with methods prescribed by the department shall be used for testing and measuring milk.

Milk quality work shall be performed by the processor or manufacturer in accordance with the rules and regulations adopted by the department.

History: C. 1953, 4-3-7, enacted by L. 1979, ch. 2, § 4.

4-3-8. Licenses and permits — Application — Fee — Expiration — Renewal.

(1) Application for a license to operate a plant or to manufacture butter or cheese, pasteurize milk, test milk for payment, or haul milk in bulk shall be made to the department upon forms prescribed and furnished by it. Upon receipt of a proper application, compliance with all applicable regulations, and payment of a license fee determined by the department pursuant to Subsection 4-2-2(2), the commissioner, if satisfied that the public convenience and necessity and the industry will be served, shall issue an appropriate license to the applicant subject to suspension or revocation for cause. Each license issued under this section expires at midnight on December 31 of each year. A license to operate a plant or to manufacture butter or cheese, pasteurize milk, test milk for payment, or to haul milk in bulk is renewable for a period of one year upon the payment of an annual license renewal fee determined by the department pursuant to Subsection 4-2-2(2) on or before December 31 of each year.

(2) Application for a permit or certificate to produce milk shall be made to the department on forms prescribed and furnished by it. Upon receipt of a proper application and compliance with all applicable regulations, the commissioner shall issue a permit entitling the applicant to engage in the business of producer, subject to suspension or revocation for cause. No fee may be charged by the department for issuance of a permit or certificate.

History: C. 1953, 4-3-8, enacted by L. 1979, ch. 2, § 4; L. 1984 (2nd S.S.), ch. 15, § 7; 1985, ch. 130, § 3.

Amendment Notes. — The 1984 (2nd S.S.) amendment substituted "determined by the department pursuant to Subsection 63-38-3(2)"

for "in the amount of \$10" in the second and fourth sentences of Subsection (1); and made a minor change in phraseology.

The 1985 amendment substituted "Subsection 4-2-2(2)" for "Subsection 63-38-3(2)" in two places in Subsection (1).

4-3-9. Licenses, permits and certificates — Suspension or revocation — Grounds.

(1) The department may revoke or suspend the license, permit, or certification of any person who violates this chapter or any rule enacted under the authority of this chapter.

(2) All or part of any license, permit, or certification may be suspended immediately if an emergency exists that presents a clear and present danger to the public health, or if inspection or sampling is refused.

History: C. 1953, 4-3-9, enacted by L. 1979, ch. 2, § 4; 1987, ch. 161, § 10.

Amendment Notes. — The 1987 amendment, effective January 1, 1988, in Subsection (1), in the first sentence substituted "rule enacted under the authority of this chapter" for

"regulation promulgated pursuant to it without a hearing unless the person whose privilege is threatened requests an immediate hearing on the issue before the department" and deleted the second sentence, which read "Such a request shall be made in writing to the com-

missioner"; in Subsection (2), deleted the last sentence, which read "An opportunity for hearing in such a case shall be afforded without delay"; and made minor changes in phraseol-

ogy and punctuation throughout the section.

Cross-References. — Procedure for suspension or revocation, § 4-1-5.

4-3-10. Unlawful acts specified.

It is unlawful for any person in this state to:

- (1) operate a plant without a license issued by the department;
- (2) market milk without a permit or certificate issued by the department;
- (3) manufacture butter or cheese, pasteurize milk, test milk for payment, or haul milk in bulk without a special license to perform the particular activity designated in this subsection; provided, that if more than one person working in a plant is engaged in the performance of a single activity designated in this subsection, it is sufficient if the person who directs the activity is licensed.
- (4) manufacture, distribute, sell, deliver, hold, store, or offer for sale any adulterated or misbranded dairy product;
- (5) manufacture, distribute, sell, deliver, hold, store, or offer for sale any dairy product without a license, permit, or certificate required by this chapter;
- (6) sell or offer for sale any milk not intended for human consumption unless it is denatured or decharacterized in accordance with the regulations of the department;
- (7) manufacture, distribute, sell, or offer for sale any filled milk labeled as milk or as a dairy product;
- (8) keep any animals with brucellosis, tuberculosis, or other infectious or contagious diseases communicable to humans in any place where they may come in contact with cows or other milking animals;
- (9) draw milk for human food from cows or other milking animals that are infected with tuberculosis, running sores, communicable diseases, or from animals that are fed feed that will produce milk that is adulterated;
- (10) accept, or process milk from any producer without verification that the producer holds a valid permit or certification or, if milk is accepted from out of the state, without verification that the producer holds a permit or certification from the appropriate regulatory agency of that state;
- (11) use any contaminated or unclean equipment or container to process, manufacture, distribute, deliver, or sell a dairy product;
- (12) remove, change, conceal, erase, or obliterate any mark or tag placed upon any equipment, tank, or container by the department; except, for the purpose of cleaning and sanitizing it;
- (13) use any tank or container used for the transportation of milk or other dairy products which is unclean or contaminated;
- (14) refuse to allow the department to take samples for testing; or
- (15) prohibit adding vitamin compounds in the processing of milk and dairy products in accordance with regulations of the department.

History: C. 1953, 4-3-10, enacted by L. 1979, ch. 2, § 4.

4-3-11. Processors, manufacturers, or distributors — Unlawful to give money, equipment, or fixtures to consumer — Exception.

It is unlawful for any person engaged in business as a processor, manufacturer, or distributor, or through affiliates, subsidiaries, associates, agents or stockholders, to furnish, service, repair, give, lease, sell, or loan to a retailer or consumer any money, equipment, or fixtures, including ice cream cabinets or bulk milk dispensers, supplies, or other things having a real or substantial value, or any expendable supplies commonly provided in connection with sale of dairy products to a consumer; provided, that this section shall not be construed to prohibit leasing or renting ice cream cabinets, milk dispensers, or milk coolers for civic affairs or exhibits for a period not to exceed 10 days in any one period of six consecutive months.

History: C. 1953, 4-3-11, enacted by L. 1979, ch. 2, § 4.

COLLATERAL REFERENCES

A.L.R. — Federal pre-emption of state food labeling legislation or regulation, 79 A.L.R. Fed. 181.

Validity, under commerce clause (Art. I, § 8, cl. 3), of state statutes regulating labeling of food, 79 A.L.R. Fed. 246.

4-3-12. Injunctions — Bond not required — Standing to maintain private action — Damages authorized.

(1) The commissioner is authorized to apply to any court of competent jurisdiction for a temporary restraining order or injunction restraining any person from violating this chapter. No bond shall be required of the department in any proceeding brought under this subsection.

(2) In addition to penalties provided in this chapter, any person who suffers or is threatened with injury from any existing or threatened violation of § 4-3-11 may commence an action in any court of competent jurisdiction for damages and, if proper, injunctive relief. Any organized and existing trade association, whether incorporated or not, is authorized to institute and prosecute a suit for injunctive relief and damages, as the real party in interest, on behalf of one or more of its members if the violation of § 4-3-11 directly or indirectly affects a member.

History: C. 1953, 4-3-12, enacted by L. 1979, ch. 2, § 4.

4-3-13. Milk or milk products consumed by owner of farm exempt.

This chapter is inapplicable to milk or milk products produced on the farm if such milk or milk products are consumed by the owner of the farm or members of such owner's immediate family.

History: C. 1953, 4-3-13, enacted by L.
1979, ch. 2, § 4.

4-3-14. Sale of raw milk prohibited — Exceptions — Suspension of producer's permit.

- (1) The sale of raw milk is prohibited unless:
 - (a) The producer holds a permit issued by the department.
 - (b) The sale and delivery of the milk is made upon the premises where the milk is produced.
 - (c) The sale is to consumers for household use and not for resale.
 - (d) The milk is bottled or otherwise contained on the premises where the milk is produced in sanitary containers furnished by the producer under sanitary conditions, labeled "raw milk," and meets the other labeling requirements.
 - (e) The milk is cooled to 50 degrees or lower Fahrenheit within one hour after being drawn from the cow and maintained at such temperature until delivered to the consumer.
 - (f) The bacterial plate count of the milk does not exceed 20,000 per c.c. or the direct microscopic count of which does not exceed 20,000 per c.c. if individual colonies are counted, or 80,000 per c.c. if individual organisms are counted and meets the coliform count, and bacterial and coliform enforcement standards for grade A pasteurized milk.
 - (g) The production of the milk conforms in all other particulars to state law and departmental regulations for the production of grade A milk.
 - (h) All dairy animals on the premises are identified by a mark or breed registration papers and are free of tuberculosis, brucellosis, and other diseases carried through milk.
 - (i) All persons on the premises performing any work in connection with the production, bottling, handling, or sale of the raw milk are free from communicable disease.
- (2) If the department finds that the production, handling, or sale of milk or the bacteria counts violate those allowed by this section, or that the health of any person or dairy animal offends this section, the permit of such raw milk producer shall be suspended until such time as compliance is had with this section.

History: C. 1953, 4-3-14, enacted by L.
1979, ch. 2, § 4; L. 1980, ch. 1, § 2.

4-3-15. Dairy Advisory Board created — Composition — Appointment — Removal — Responsibilities — Compensation.

There is hereby created a Dairy Advisory Board composed of five members appointed to three-year terms of office by the commissioner. Three members shall be active dairy producers recommended by producer organizations and the remaining two members a grade A milk processor and a non-grade A milk processor, respectively. If a nominee is rejected by the commissioner, the recommending authority shall submit another nominee.

A member may, at the commissioner's discretion, be removed upon the request of the organization that recommended the appointment. One member

shall be designated by the commissioner to serve as chairman who is responsible for the call and conduct of meetings of the dairy advisory board. Attendance of a simple majority of the members at a duly-called meeting shall constitute a quorum for the transaction of official business. Members are entitled to per diem and expenses in accordance with § 63-2-15 [as established by the Division of Finance].

The Dairy Advisory Board shall confer with and advise the department concerning the planning and implementation of programs affecting the dairy industry and concerning the administration of this chapter.

History: C. 1953, 4-3-15, enacted by L. 1979, ch. 2, § 4.

Compiler's Notes. — Section 63-2-15, referred to at the end of the second paragraph, was repealed by Laws 1981, ch. 257, § 13. The

bracketed language following reference to that section was inserted pursuant to instructions by the Office of Legislative Research and General Counsel.

4-3-16. Repealed.

Repeals. — Section 4-3-16, as enacted by Laws 1979, ch. 2, § 4, making violations of the

chapter class "B" misdemeanors, was repealed by Laws 1985, ch. 104, § 8.

CHAPTER 4

EGGS

Section		Section	
4-4-1.	Department to establish egg grades and standards.	4-4-5.	Maintenance of candling records — Inspection of records.
4-4-2.	Authority to make and enforce regulations.	4-4-6.	Retailers exempt from prosecution — Conditions for exemption.
4-4-3.	Definitions.	4-4-7.	Repealed.
4-4-4.	Unlawful acts specified.		

4-4-1. Department to establish egg grades and standards.

The department shall establish grades and standards of quality, size, and weight governing the sale of eggs.

History: C. 1953, 4-4-1, enacted by L. 1979, ch. 2, § 5.

COLLATERAL REFERENCES

Am. Jur. 2d. — 35 Am. Jur. 2d Food § 38.

C.J.S. — 36A C.J.S. Food § 3.

Key Numbers. — Food ☞ 2.